

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
LOIS BOHOVESKY, individually and as the next best
Friend of the Deceased PAULA BOHOVESKY,

Petitioner-Plaintiff,

-against-

**VERIFIED
PETITION-COMPLAINT**

Index No.

THE COMMUNITY SUPERVISION PROGRAM
UNIT in Peekskill for the Department of Corrections
and THE NEW YORK STATE PAROLE
BOARD,

Respondents-Defendants.

-----X

Petitioner-Plaintiff Lois Bohovesky individually and as the next best Friend of the Deceased Paula Bohovesky, by and through her attorneys, as and for her Petition-Complaint against the above-captioned Respondents-Defendants, alleges upon information and belief as follows:

PRELIMINARY STATEMENT

1. This Litigation is filed because the families of murdered victims should not be subject to or have to endure a convicted murderer living or traveling nearby them when the murderer is placed on parole after being released from a term of imprisonment. This Litigation is also filed to have a proper review of all the Respondents-Defendants actions herein.

2. Lois Bohovesky ("Lois" or "Mrs. Bohovesky") is the mother of Paula Bohovesky ("Paula"), a 16-year old high school honor student who was brutally assaulted and murdered on October 28, 1980, by Richard LaBarbera ("Paula's killer") and Robert McCain ("Co-Defendant") (collectively, the "Murderers") as she made her way home from her after-school job at the Pearl River Public Library. The Murderers targeted her, followed her, beat her, attempted to sexually

assault her, and repeatedly stabbed her, causing her death. The impact of this horrific and terrible crime is still palpable nearly 40 years later in the quiet, bucolic hamlet of Pearl River, New York, where Paula's mother, Lois, still resides to this day.

3. The family members who suffer such a devastating and unspeakable loss, like Mrs. Bohovesky endured when her beautiful 16-year old child was so tragically taken from her, should not be made to suffer further when those who have been convicted of committing such acts are released from their term of imprisonment and permitted to live near the family members of their victims.

4. By decision of the Respondent-Defendant, the New York State Parole Board, Paula's killer was granted parole on June 13, 2019, and is due to be released from his term of imprisonment to parole on July 8, 2019. Upon information and belief, Respondent-Defendant the Community Supervision Unit in Peekskill will supervise Paula's killer during his term of parole.

5. The City of Peekskill, New York, is located in Westchester County, which is adjacent to Rockland County, and is merely 30 miles from Pearl River, New York, where Paula was murdered and where Lois resides.

6. This litigation is filed because victims of murderers and their families should be accorded the same respect and rights as those who have been convicted of murder.

JURISDICTION AND VENUE

7. Jurisdiction of this Court is based upon the New York State Constitution.

8. This action is brought pursuant to the statutory powers of the Supreme Court to decide matters within its jurisdiction.

9. This is a hybrid proceeding seeking relief pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR").

10. Additionally, and alternatively, declaratory relief is also authorized pursuant to CPLR Section 3001.

11. Venue is proper pursuant to CPLR § 506(b) as the body taking the action herein referenced, the Respondents-Defendants, have a place of business within the County in which this litigation is brought and the Peekskill Office where Paula's killer is to be supervised is in Westchester County, New York.

12. This litigation is filed by the attorneys for the Petitioner-Plaintiff on a *pro bono publico* basis.

13. This litigation is filed shortly after Paula's killer's release date was made public.

PARTIES

14. At all times relevant herein the Petitioner-Plaintiff Mrs. Bohovesky is the mother of murdered victim Paula and a resident of Pearl River, a hamlet located in the Town of Orangetown, County of Rockland, State of New York, where the murder occurred.

15. At all times relevant herein the Respondent-Defendant New York State Parole Board (the "Parole Board") is a duly organized municipal body in the State of New York acting pursuant to law and within the Respondent-Defendant New York State Department of Corrections and Community Supervision ("DOCCS").

16. At all times relevant herein, the Parole Board has twelve (12) members appointed to serve as Board Members and Commissioners pursuant to New York State law.

17. At all times relevant, the Parole Board has an office for the conduct of business at 1134 New Scotland Avenue, City of Albany, County of Albany, State of New York and DOCCS has an Office to supervise Paula's killer at 14 Bank Street, Peekskill, New York 10566.

18. At all times relevant herein, the Parole Board reviewed the application for parole by Paula's killer with a Department Identification Number 81A2806.

19. Respondent-Defendant the Community Supervision Unit in Peekskill (the "Peekskill Office") is an office of the Parole Division of DOCCS located at 14 Bank Street, City of Peekskill, County of Westchester, State of New York.

20. The Murderers were tried jointly and convicted of murder in the second degree on June 6, 1981, and thereafter sentenced to an indeterminate sentence of 25 years to life for the brutal murder of Paula. Paula's killer was one of two murderers so convicted.

21. Paula's mother, Mrs. Bohovesky, who turns 87 years old this month, has continued to reside in Pearl River since her daughter's murder and has standing to bring this litigation.

BACKGROUND OF LITIGATION

22. On the morning of October 29, 1980, the body of 16-year old Paul was discovered lying face down near a pool of blood with her pants pulled down around her ankles. Paula's injuries included five stab wounds on her back, blood coming out of the nose, a swollen area on her forehead, and numerous bruises on her neck, face, and calf area of one of the legs. *People v. McCain*, 134 A.D.2d 287, 288 (2d Dep't 1987).

23. After the discovery of Paula's body, both Murderers were questioned by the police and made incriminating statements. The Co-Defendant confessed to following Paula on North Main Street in Pearl River, striking her in the head with a rock approximately six inches in diameter, and beating her about the face and throat areas to render her unconscious. *Id.*

24. Paula's killer made a series of conflicting statements to the police and had different versions of his involvement from admitting he stabbed Paula to claiming he fled, but returned to

the scene later and found the body of the victim lying face down near a large pool of blood with her jeans and her underwear pulled down around her ankles.

25. During the joint trial, Rockland County Chief Medical Examiner Dr. Frederick T. Zugibe, testified concerning Paula's injuries and cause of death: he opined that head and neck wounds were inflicted prior to the stab wounds; he opined with a reasonable degree of medical certainty that Paula would have died within a period of six to twelve hours as a result of the neck compression and the contusion to the head and resulting edema of the brain even if the stab wounds had not been sustained. *Id.*

26. In addition, medical and forensic evidence revealed the presence of Paula's blood on the Co-Defendant's belt. *Id.*

27. On June 6, 1981, a Rockland County jury convicted both of Murder in the Second Degree. Upon the rendering of the verdict by the jury, neither Murderer displayed any remorse or emotion. *See New York Times, 2 Guilty in Death of Pearl River Girl*, June 6, 1981 www.nytimes.com (last accessed June 29, 2019).

28. Both Murderers have applied for and been denied parole by the Parole Board numerous times since first becoming eligible in or around 2005. A not-for-profit corporation, Petition for Paula, Inc. ("Petition for Paul"), was formed in New York in 2009 with the mission to keep Paula's memory alive and to gather signatures of those opposed to the release of the Murderers. Since the creation of Petition for Paula, approximately 35,000 signatures have been collected so that the Murderers remain incarcerated.

29. Within the past few weeks, Lois and others have learned that while the Parole Board did not release on parole the Co-Defendant, the Parole Board released Paula's killer without any restrictions where Paula's killer could reside—so Paula's killer could reside right nearby Lois.

30. Since the Parole Board's unfathomable decision to release Paula's killer, there has been substantial community outrage and fierce opposition. A candlelight vigil was held on the evening of June 15, 2019, where nearly 2,000 protesters gathered to walk in silence along the same path Paula walked on the night she was murdered. Petition for Paula has also continued to gather thousands of online signatures and countless have expressed their support of the efforts to challenge and fight the decision to release Paula's killer, including hundreds of letters and phone calls to the Parole Board from individuals across all walks of life united in their disgust of this decision to grant parole to Paula's killer.

31. In addition to the tremendous community support for Paula, significant national media outlets have covered the Parole Board's decision, including FoxNews and People Magazine.

32. Through all of this, Mrs. Bohovesky has remained strong and committed to keeping the memory of her deceased daughter alive and has handled her grief and sorrow with tremendous grace and dignity.

33. Among her fears, as set forth further in her Affidavit and the annexed Affidavits in Support of John A. Murphy and Robert Baird, sworn to on July 1, 2019, and Affirmation of Dennis E.A. Lynch, Esq. affirmed on June 30, 2019, is that one day Paula's killer would be released from custody. Not only was the decision to release Paula's killer wrongly and unlawfully made, the supervision of his parole from Peekskill, a mere 30-mile drive from where Lois lives, undoubtedly threatens Lois's safety, both of mind and body. Without some reasonable restrictions, there is nothing to prevent Paula's killer from returning to Lois's residence in Pearl River, the scene of his crime, where whatever peace, serenity, or normalcy Lois has regained since 1980 will surely be lost.

AS AND FOR A FIRST CLAIM FOR RELIEF

34. Petitioner-Plaintiff repeats and realleges each and every allegation in paragraphs “1” through “33” as though set forth in full herein.

35. The Respondents-Defendants have the authority to implement “special conditions” on the terms of Paula’s killer parole and discharge plan.

36. New York Executive Law (“Executive Law”) § 259-c provides that the state board of parole shall have certain duties and powers including the following:

[shall] have the power and duty of determining the conditions of release of the person who may be presumptively released, conditionally released or subject to a period of post-release supervision under an indeterminate or determinate sentence of imprisonment

Executive Law § 259-c(2) (McKinney’s 2019).

37. Further, New York Code, Rules, and Regulations (“NYCRR”) provides the following with respect to imposing conditions on a parolee’s release:

A special condition may be imposed upon a releasee either prior or subsequent to release. The releasee shall be provided with a written copy of each special condition imposed. Each special condition may be imposed by a member or members of the Board of Parole, an authorized representative of the Division of Parole, or a parole officer.

9 NYCRR § 8003.3(McKinney’s 2019).

38. As set forth above, the Respondents-Defendants have the statutory authority to impose a “special condition” on Paula’s killer release, such as restricting him from travelling or residing within a designated area of where the crime occurred and where the victim’s family still resides. Instead, the Respondent-Defendants have decided to supervise Paula’s killer’s parole from Peekskill, New York located in the adjoining county and a mere 30 miles from Pearl River.

39. The Panel of the Parole Board could have, but did not, require Paula's killer to resident a safe distance away from Lois which would be five (5) counties away for the first five (5) years of his release from prison.

40. Accordingly, this Court is respectfully requested to determine, declare and otherwise hold that the actions of Respondents-Defendants in deciding to supervise Paula's killer parole from the adjoining county to where he committed this crime and where the victim's family still resides is an improper action that should be enjoined as it is arbitrary and capricious and an abuse of discretion.

AS AND FOR A SECOND CLAIM FOR RELIEF

41. Petitioner-Plaintiff repeats and realleges each and every allegation in paragraphs "1" through "40" as though set forth in full herein.

42. The Respondents-Defendants had before it a record of the changing version of the murder of Paula by Paula's killer.

43. In many of his appearances, Paula's killer spoke or was questioned about his role and says he merely watched. But, that "story" changed over the years:

2005: He got close enough to see Paula's clothes in disarray

2007: He got close enough to think Paula was still alive and that if he had acted differently, she might not have died.

2009: The closest he got to where Paula died was 10-15 yards.

2011: There was no discussion of where he was and what he saw

2014: He says he never went anywhere near where Paula died, staying near the Police Booth in the heart of Pearl River, two long blocks from the scene of Paula's death.

2015: When asked, "So, is it your position that you were present at the time that the young lady was attacked but that the attack was committed by Mr. McCain and not you, is that your position?," his replay was: "Basically, yes...."

2017: When asked, "Did you have any physical contact with (Paula) in the instant offense?" he responded "No, sir."

44. The action of Respondents-Defendants in granting Parole to Paula's killer was arbitrary and capricious, a violation of lawful procedure and an abuse of discretion as the changing

versions of involvement by Paula's killer where evidence found that he had repeatedly stabbed Paula after the Co-Defendant hit her in the head and caused her to violently fall to the ground confirms no evidence of "sincere remorse" as the Respondents-Defendants so found.

45. Accordingly, this Court is respectfully requested to determine, declare and otherwise hold that the actions of the Respondents-Defendants violate the applicable law and is otherwise improper action that should be enjoined as well as being so declared illegal.

AS AND FOR A THIRD CLAIM FOR RELIEF

46. Petitioner-Plaintiff repeats and realleges each and every allegation in paragraphs "1" through "45" as though set forth in full herein.

47. The actions of Respondents-Defendants in granting Parole to Paula's killer was arbitrary and capricious and in violation of lawful procedure and must be declared null and void.

48. The Respondents-Defendants have a procedure under the subsections of 9 NYCRR 8002 to interview and grant or deny an inmate parole such as Paula's killer.

49. The decision of whether to grant an inmate parole requires the consideration and determination of the entire Parole Board, pursuant to the subsections of 9 NYCRR 8002.2.

50. The Parole Board failed to fulfill its statutory and regulatory obligations that govern a determination to grant parole and its Decision is fatally flawed as a matter of law and must be declared null and void as to Paula's killer.

51. The Parole Board is required to consider "risk and needs principles" in "making a release determination" pursuant to 9 NYCRR 8002.2(a).

52. The Parole Board failed to properly and fully consider the risk and needs principles in making its release determination for Paula's killer and the Decision therefore must be declared null and void.

53. The Parole Board is required to “consider...factors in making a release determination” pursuant to 9 NYCRR 8002.2(d).

54. The Parole Board failed to consider the relevant factors in making its release determination for Paula’s killer in its Decision and the Decision must be declared null and void as a matter of law.

55. The decision of whether to release an inmate such as Paula’s killer following its interview and deliberations is reserved to the Parole Board pursuant to 9 NYCRR 8002.3(a).

56. The Parole Board improperly and unlawfully delegated its statutory and regulatory obligations underlying this Decision to release Paula’s killer and the Decision must be declared null and void as a matter of law.

57. The Respondents-Defendants acted improperly and unlawfully in having the Panel, and not the Parole Board, determine the Decision to release Paula’s killer.

AS AND FOR A FOURTH CLAIM FOR RELIEF

58. Petitioner-Plaintiff repeats and realleges each and every allegation in paragraphs “1” through “57” as though set forth in full herein.

59. Pursuant to the Administrative Procedure Act and other provisions of New York State law, the Respondents-Defendants are required to timely release information about actions taken, including the actions taken by the Respondents-Defendants in granting Paula’s killer Parole.

60. The Petitioner through her representatives and otherwise sought to obtain a transcript of the Parole Board hearing leading to the release of Paula’ killer in a timely manner so as to undertake proper judicial review.

61. The practice and policy of the Respondents-Defendants is not to provide critical information so as to provide meaningful judicial review and to allow a redress of grievances by the Petitioner.

62. As a result of the foregoing, the actions of the Respondents-Defendants should be declared arbitrary and capricious, an abuse of discretion and a violation of lawful procedure.

63. No other application has been made for the relief requested herein.

RELIEF SOUGHT

WHEREFORE, the Petitioner-Plaintiff demand Judgment against the Respondents-Defendants as follows; to declare and determine that the Decision regarding Paula's killer was arbitrary and capricious, in violation of lawful procedure, and abuse of discretion and action that borders on being an impropriety; that the failure to publicly and promptly post the Transcript of the Parole Board hearing regarding Paula's killer was arbitrary and capricious, in violation of lawful procedure, and abuse of discretion and action that border on being an impropriety; that the Parole Board failed to issue its Decision in accordance with its statutory and regulatory obligations when it unlawfully delegated its decision making authority to the Panel; and that the Parole Board be preliminarily and permanently enjoined from allowing any determinations or decision on a Parole Application without full disclosure on the public record of any potential conflicts of interests of the Respondents-Defendants; remanding the application for Parole of Paula's killer back to the entire Parole Board whose Members have the full transcripts of all prior Parole Board hearings for Paula's killer; by having that newly formed Parole Board absent of conflicts of interest or appearance of impropriety provide an unadulterated recommendation to the Parole Board so that the Board may lawfully exercise its statutory and regulatory obligations and issue a non-defective decision; ordering that Paula's killer be required to live and report to a parole office no

less than five counties away from Rockland for the first five years following release; and granting such other, further and different relief as to this Court seems just, proper and equitable under the circumstances herein including but not limited to joining any interested party or person to this proceeding..

Dated: July 1, 2019
White Plains, New York

BLEAKLEY PLATT & SCHMIDT, LLP

By: _____


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VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF WESTCHESTER)

JOHN W. McGOWAN, being duly sworn, deposes and says;

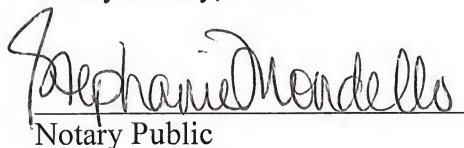
I am an attorney at law duly admitted to practice law in the Courts of the State of New York and I am an associate of the law firm of Bleakley Platt & Schmidt, LLP, attorneys for Petitioner-Plaintiff Lois Bohovesky, individually and as the next best Friend of the Deceased Paula Bohovesky, plaintiff in the within matter. I have read the annexed Verified Petition-Complaint, know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters not stated upon knowledge, is based upon material contained in my file.

The reason why I make this verification is that my client is not located within the County where I maintain my office.



JOHN W. McGOWAN

Sworn to before me this
1st day of July, 2019



Notary Public

STEPHANIE MONDELLO
Notary Public, State of New York
No. 01MO4946377
Qualified in Putnam County
Certificate Filed in Westchester County
Commission Expires 2/6/23